

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CISCO SYSTEMS, INC.,

Plaintiff-Appellant,

v.

ARISTA NETWORKS, INC.,

Defendant-Appellee.

No. 2017-2145

**DEFENDANT-APPELLEE’S MOTION FOR 60-DAY EXTENSION
OF TIME TO FILE APPELLEE’S BRIEF**

RELIEF SOUGHT

Defendant-Appellee Arista Networks, Inc. (“Arista”) respectfully submits this motion pursuant to Federal Circuit Rule 26(b), for a sixty (60) day extension of time to file its Appellee’s Brief. Under the current schedule, Arista’s Appellee’s Brief is due October 23, 2017. If this extension is granted, the Appellee’s Brief will be due December 22, 2017. No previous extension of this deadline has been requested or granted.

GROUNDS FOR THE MOTION

As stated in the Supporting Declaration of Steven A. Hirsch, Arista has the following reasons for seeking this extension:

1. The trial record in this case is extensive, consisting of 2,838 pages of transcript and 290 admitted exhibits.
2. Plaintiff-appellant Cisco Systems, Inc. (“Cisco”) has briefed five independent grounds for reversal.
3. The outcome of this appeal is of crucial importance to Arista, which will have only one chance both to respond to the many arguments in the Appellant’s Brief and to anticipate any related points that Cisco may make on reply.
4. In the period since the May 10, 2017 JMOL ruling, Mr. Hirsch, the lawyer principally responsible for drafting Cisco’s brief, has had to attend to numerous cases and filings, including:
 - Two state-court appellate writ petitions in *Maplebear Inc., dba Instacart v. Superior Court (Busick)*, California Court of Appeal, First Appellate Division, Case Nos. A151703 and A152162;

- Assisting in the drafting of a summary-adjudication motion in *Perez v. Public Storage*, Los Angeles County Superior Court Case No. BC611584;
- Preparing a petition for California Supreme Court review in *Thomas v. Applied Medical Corporation*, California Supreme Court Case No. S241879;
- Preparing for a Convention Against Torture relief hearing and editing pre- and post-hearing briefs in *In the Matter of Tijani*, United States Department of Justice, Executive Office for Immigration Review, Immigration Court, File No. A027 431 266;
- Assisting in the drafting of a motion to dismiss in *Barnett v. Facebook, Inc.*, United States District Court, Northern District of California, Case No. 16-cv-06232-JSW;
- Assisting in the drafting of a motion to dismiss in *K.G.S. v. Facebook, Inc. et al.*, Circuit Court of Jefferson County, Alabama Case NO. 01-cv-2017-00255;
- Drafting a complaint and an opposition to a motion to dismiss in *Cockrum v. Donald J. Trump for President, Inc.*,

United States District Court for the District of Columbia

Case No. 17-cv-1370-ESH;

- Preparing for and participating in a motion-to-dismiss hearing in *Scott v. Arnold*, United States District Court, Northern District of California, Case No. 16-cv-06584-JST;
- Preparing for and participating in oral argument in *RSB Vineyards, LLC v. Orsi*, California Court of Appeal, First Appellate Division, Case No. A143781.
- Drafting a Brief in Opposition to certiorari in *Antonick v. Electronic Arts, Inc.*, United States Supreme Court Case No. 17-168.

This work has left Mr. Hirsch with little time to do much advance work on this appeal before receiving the Appellant's Brief.

Granting the requested extension will allow Arista's counsel to meet their obligations while still having adequate time to finalize Arista's answering brief in this case.

STATEMENT REGARDING OPPOSITION TO THE MOTION

Counsel for Arista has conferred with counsel for Cisco concerning this motion. Cisco opposes any extension longer than 30 days, and even

then consents to 30 days only on condition that Arista agrees not to oppose a 14-day extension of time for Cisco's Reply Brief. Counsel did not state whether Cisco intends to file a written opposition to this motion.

Arista notes that Cisco took 126 days—including a 30-day extension of time granted by this Court—to draft and file its opening brief¹ and that Cisco apparently also wants a 14-day extension for its reply brief, yet opposes giving Arista a total of 100 days from the date of Cisco's brief to file the only brief that Arista will be permitted to file in this case.

Dated: September 28, 2017 Respectfully submitted,

By: /s/Steven A. Hirsch
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Attorneys for Defendant-Appellee
Arista Networks, Inc.

¹ 126 days elapsed between the date on which the district denied the parties' JMOL motions (May 10, 2017) and the date on which Cisco filed its opening brief (September 13, 2017).

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CERTIFICATE OF INTEREST

Counsel for the:

☐ (petitioner) ☐ (appellant) ☐ (respondent) ☒ (appellee) ☐ (amicus) ☐ (name of party)

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10 % or more of stock in the party
Arista Networks Inc.	N/A	NONE

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (**and who have not or will not enter an appearance in this case**) are:

See attachment.

June 29, 2017

Date

/s/ Brian Ferrall

Signature of counsel

Please Note: All questions must be answered

/s/ Brian Ferrall

Printed name of counsel

cc:

Reset Fields

Cisco v. Arista

U.S. Court of Appeals for the Federal Circuit No. 2017-2145

Attachment to Arista Networks, Inc. Certificate of Interest

Keker, Van Nest & Peters: Robert Van Nest, Brian Ferrall, David Silbert, Steven Hirsch, Michael Kwun, Ajay Krishnan, Ryan Wong, Elizabeth McCloskey, David Rosen, Eduardo Santacana, Andrea Nill-Sanchez, Ashok Ramani, Katherine Lloyd-Lovett, Nick Marais

Fish & Richardson: Juanita Brooks, Kelly Hunsaker, Lauren Degnan, Michael McKeon, Ruffin Cordell

Wilson Sonsini Goorich & Rosati: Scott A. Sher, Susan Creighton, Bradley Tennis, Jonathan Jacobson, Chul Pak, David Reichenberg

Tensegrity Law Group: Matthew Powers, William Nelson, Paul Ehrlich, Alex Chan, Wanli Chen,

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No. 2017-2145

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Defendant-Appellee.

**DECLARATION OF STEVEN A. HIRSCH IN SUPPORT OF
DEFENDANT-APPELLEE'S MOTION FOR EXTENSION OF
TIME TO FILE APPELLEE'S BRIEF**

I, Steven A. Hirsch, hereby declare as follows pursuant to 28
U.S.C. § 1746:

1. I am a partner at Keker, Van Nest & Peters LLP, a member of the Bar of this Court, and the lawyer principally responsible for drafting the Appellee's Brief for Defendant-Appellee Arista Networks, Inc. ("Arista") in this appeal. I submit this declaration in support of Arista's motion for an extension of time in which to file its Appellee's Brief.

2. Arista's Appellee's Brief is currently due on October 23, 2017. Arista respectfully requests a sixty (60) day extension of this deadline, to December 22, 2017.

3. Arista has neither requested nor been granted any prior extension of time in this appeal.

4. The trial record in this case is extensive, consisting of 2,838 pages of transcript and 290 admitted exhibits.

5. Plaintiff-appellant Cisco Systems, Inc. ("Cisco") has briefed five independent grounds for reversal.

6. The outcome of this appeal is of crucial importance to Arista, which will have only one chance both to respond to the many arguments in the Appellant's Brief and to anticipate any related points that Cisco may make on reply.

7. In the period since the district court's May 10, 2017 JMOL ruling, I have had to attend to numerous cases and filings, including:

- Two state-court appellate writ petitions in *Maplebear Inc., dba Instacart v. Superior Court (Busick)*, California Court of Appeal, First Appellate Division, Case Nos. A151703 and A152162;

- Assisting in the drafting of a summary-adjudication motion in *Perez v. Public Storage*, Los Angeles County Superior Court Case No. BC611584;
- Preparing a petition for California Supreme Court review in *Thomas v. Applied Medical Corporation*, California Supreme Court Case No. S241879;
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- Assisting in the drafting of a motion to dismiss in *Barnett v. Facebook, Inc.*, United States District Court, Northern District of California, Case No. 16-cv-06232-JSW;
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- Drafting a Brief in Opposition to certiorari in *Antonick v. Electronic Arts, Inc.*, United States Supreme Court Case No. 17-168.

8. This work has left me with little time to do much advance work on this appeal before receiving the Appellant's Brief.

9. I discussed this motion with counsel for Plaintiff-Appellant Cisco Systems, Inc. ("Cisco"). Cisco opposes any extension longer than 30 days, and even then consents to 30 days only on condition that Arista agrees not to oppose a 14-day extension of time for Cisco's Reply Brief. Counsel did not state whether Cisco intends to file a written opposition to this motion.

10. Cisco took 126 days—including a 30-day extension of time granted by this Court—to draft and file its Appellant’s Brief.¹ Cisco also wants a 14-day extension for its reply brief. Yet Cisco opposes giving Arista a total of 100 days from the date of Cisco’s Appellant’s Brief to file the only brief that Arista will be permitted to file in this case.

11. I have exercised, and will continue to exercise, diligence regarding this appeal and will file Appellee’s Brief by the requested due date.

I declare under penalty of perjury under that the foregoing is true and correct. Executed on September 28, 2017.

s/Steven A. Hirsch

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Attorneys for Defendant-Appellee
Arista Networks, Inc.

¹ 126 days elapsed between the date on which the district denied the parties’ JMOL motions (May 10, 2017) and the date on which Cisco filed its opening brief (September 13, 2017).

CERTIFICATE OF FILING AND SERVICE

I, Robyn Cocho, hereby certify pursuant to Fed. R. App. P. 25(d) that, on September 28, 2017 the foregoing Motion for Extension of Time was filed through the CM/ECF system and served electronically on parties in the case.

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/s/ Robyn Cocho

Robyn Cocho